

Appln No. 10/752,382

Amdt date July 22, 2005

Reply to Office action of January 24, 2005

Amendments to the Drawings:

The attached sheet of drawings includes changes to Figs. 6A and 6B. This sheet, which includes Figs. 6A and 6B, replaces the original sheet including Figs. 6A and 6B.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes

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REMARKS/ARGUMENTS

Claims 1-6, 8-14 and 16-22 are pending in this application, of which claims 1, 21 and 22 are independent. Claims 1 and 22 and the drawings have been amended for clarity. The amendments to the claims and drawings add no new matter and find full support in the application as originally filed. In view of the above amendments and following remarks, Applicant respectfully requests reconsideration and a timely indication of allowance.

Objections to the Drawings

The Examiner objected to the drawings as not showing the loop and pile fasteners of claim 7 and the air bladder of claim 15. These features were described in the specification and are covered by more general claims. Claims 7 and 15 have been cancelled herein. Accordingly, objection to the drawings based on these claims should now be moot.

Rejections under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 18 and 21 as failing to comply with the enablement requirement. Specifically, the Examiner is unclear how pin 36 could be inserted past portion 38 of the frame. The specification clearly states that the shape of the pin is not critical but rather it should conform to the shape of the openings. See pg. 7, lines 33-35 and pg. 8, lines 3-6. Accordingly, Figs. 6A and 6B have been amended to show a pin that conforms as described. Applicant submits herewith an amended set of drawings showing an amended pin in Figs. 6A and 6B. Accordingly, Applicant respectfully requests that the

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rejection of claims 18 and 21 under 35 U.S.C. § 112 be withdrawn.

Rejections under 35 U.S.C. § 102(b)

The Examiner has rejected claims 1-4, 8-11, 16, 19 and 20 under 35 U.S.C. § 102(b) as being anticipated by Kastendieck et al. Applicant respectfully traverses this rejection.

Independent claim 1, from which claims 2-4, 8-11, 16, 19 and 20 depend either directly or indirectly, has been amended herewith. As amended, claim 1 makes it clear that the frame assembly is "resting only on a user's upper forehead and in the hollows of a user's cheeks below the cheekbones and above the jaw bone." This amendment is supported by the specification at page 11 in the paragraph beginning at line 3. This positioning is further emphasized at page 12, lines 8-16 of the specification. Such positioning is distinct from that of Kastendieck et al. where a pair of plastic cheek rests "depend downwardly for resting on the cheekbones of the wearer." See Col. 2, lines 45-47 (emphasis added).

Kastendieck et al. are quite emphatic on the placement of their cheek rests. As noted above they are described as on the cheekbones in the "Summary of the Invention." This positioning is shown in each embodiment of the headgear disclosed by Kastendieck et al. See Figs. 1, 4 and 8, and cheek rests 52, 54 and 208. Indeed, Kastendieck et al. take pains to explain the benefits of placement "on a person's cheekbones." See col. 4, lines 41-44. Accordingly, not only do Kastendieck et al. describe a positioning distinct from that of claim 1 of the

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present invention (in the hollows of a user's cheeks below the cheekbones) but they expressly teach away from such positioning. Thus, claim 1 as amended is not anticipated nor rendered obvious by the teachings of Kastendieck et al. Claims 2-4, 8-11, 16, 19 and 20 are also not anticipated nor rendered obvious by Kastendieck et al. for at least the same reasons noted for claim 1. Accordingly, Applicant respectfully requests that the rejection of claims 1-4, 8-11, 16, 19 and 20 under 35 U.S.C. § 102(b) as being anticipated by Kastendieck et al. be withdrawn.

Rejections under 35 U.S.C. § 103(a)

Claims 5-7, 12-15, 17, 18, 21 and 22 were all rejected for obviousness in view of Kastendieck et al. combined with one of the other additional references. Claims 7 and 15 have been cancelled and therefore are no longer under consideration. Claims 5-6, 12-14, 17 and 18 each depend either directly or indirectly from claim 1. Moreover, none of the additional references cited by the Examiner disclose or even suggest the teaching absent from Kastendieck et al. That is, none of them show or suggest a frame assembly resting only on a user's upper forehead and in the hollows of a user's cheeks. Most do not show anything that would rest in the hollows of a user's cheeks. Aitchison, like Kastendieck et al., teaches an apparatus that would "rest against the face of the wearer at or near the cheekbones." See page 1, lines 86-90. Furthermore, even if these references did teach or suggest such a component, they could not be combined with Kastendieck et al. because there would be no motivation to make such a combination as Kastendieck

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et al. expressly teach away from such positioning. Accordingly, claims 5-6, 12-14, 17 and 18 are patentable for at least this reason and the Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 103(a) be withdrawn.

Claim 18, in particular, is also patentable because there would be no motivation to combine Kastendieck et al. and Aitchison as proposed by the Examiner. Kastendieck et al. expressly teach a frame that is "a noncollapsible structure." See col. 5, lines 17-20. Thus, it would be directly contrary to the teaching of Kastendieck et al. to make it "foldable." The over ten-year period from the issuance of Kastendieck et al. to the filing of Applicant's application, during which time Kastendieck et al. was not modified to make it foldable, further indicates the patentability of claim 18.

Independent claim 21 is not amended herein but is patentable over any combination of Kastendieck et al. with Aitchison. It would not be obvious to modify the headgear of Kastendieck et al. to make it foldable in a manner directly contrary to its teachings. Moreover, Aitchison is not analogous to the headgear of Kastendieck et al. The apparatus of Aitchison is a cumbersome apparatus for use by an optician in making observation. It does not relate in any way to equipment used by military personnel to facilitate nocturnal activities. Nor does it address any of the same problems. Thus, claim 21 is patentable for much the same reasons as noted above for claim 18 in particular. Accordingly, the Applicant respectfully requests that the rejection of claim 21 under 35 U.S.C. § 103(a) be withdrawn.

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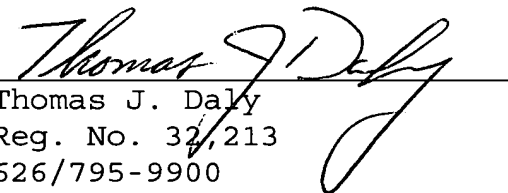
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Independent claim 22 has been amended herein to recite a frame assembly that rests on the user's face as specified in claim 1 as amended and that is foldable as specified in claim 21. Thus, claim 22 is patentable for at least the reasons noted above for claim 1 and the reasons noted above for claim 21. Accordingly, the Applicant respectfully requests that the rejection of claim 21 under 35 U.S.C. § 103(a) be withdrawn.

Respectfully submitted,
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FIG. 6A

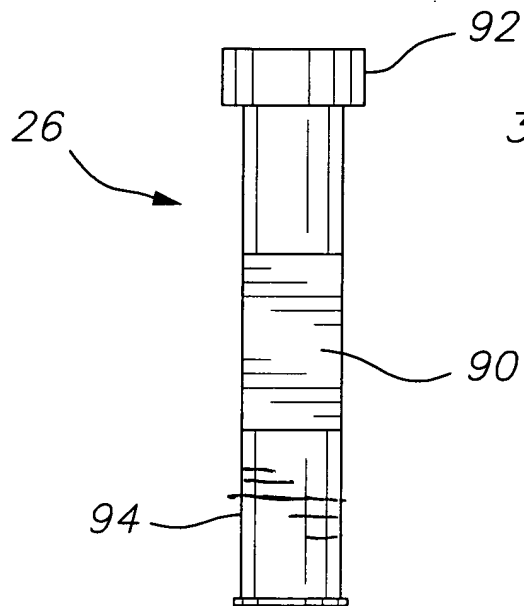


FIG. 6B

